IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.06.2007

Coram :

THE HONOURABLE MR.JUSTICE P.D.DINAKARAN

AND

THE HONOURABLE MR.JUSTICE P.P.S.JANARTHANA RAJA

Tax Case (Appeal) No.712 of 2007

Commissioner of Income-tax,
Chennai. ..Appellant/
Appellant

Vs.

M/s.Caplin Point Laboratories Ltd.,
86, Bazullah Road, T.Nagar,
Chennai-17. ..Respondent/
Respondent

Appeal under Section 260A of the Income-tax Act, 1961 against the order of the Income Tax Appellate Tribunal, Bench 'A', Chennai in I.T.A. No.2963/Mds/2004 dated 27.10.2006 for the assessment year 1995-96 against the order of the Commissioner of Income Tax (Appeals) III Chennai 600 034 for the Assessment year 1995-96 dated 6.8.2004 in ITA No.368/2002-03/A-III and against the Assessment order of Deputy Commissioner of Income Tax Company Circle I (3) Chennai-34 dated 30.3.2002 in PAN/GIR No.CX4-082 respectively.

For Appellant : Mr.J.Narayanaswamy,
Standing Counsel for
Income-tax Department

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JUDGMENT

(Judgment of the Court was delivered by
P.P.S.Janarthana Raja, J.)

This appeal is filed under Section 260A of the Income Tax Act, 1961 by the Revenue, against the order of the Income Tax Appellate Tribunal, Bench 'A', Chennai in I.T.A. No.2963/Mds/2004 dated 27.10.2006, raising the following substantial question of law:-

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"Whether in the facts and circumstances of the case, the Tribunal was right in deleting the penalty under section 271(1)(c) when the assessee had returned the interest under business income for the purpose of claiming deduction under section 80HHC and 80I?"

2. The facts leading to the above substantial question of law are as under:

The assessee is a company incorporated under the Companies Act. The assessee-company is engaged in the manufacture and sale of pharmaceutical products. The relevant assessment year is 1995-96 and the corresponding accounting year ended on 31.03.1995. The assessee-company filed its Return of income on 28.11.1995 declaring a total income of Rs.2,57,270/- after claiming deduction under Section 80HHC and Section 80I of the Income-tax Act ("Act" in short) of Rs.1,76,116/- and Rs.1,44,463/- respectively. The Return was processed under Section 143(1)(a) of the Act. Later, notice under Section 148 was issued on 18.02.2000 for the purpose of reopening the assessment. In response to the notice, the assessee filed a letter dated 29.03.2000 confirming that there was no change in the income returned and also requesting that the original Return filed on 28.11.1995 may be treated as correct and filed in response to the notice issued under Section 148 of the Act. The assessment was completed under Section 147 of the Act determining the total income at Rs.66,45,090/-. After completing the assessment, the Assessing Officer disallowed the deduction claimed by the assessee, under Section 80HHC and Section 80I of the Act. Also the Assessing Officer initiated penalty proceedings on the ground that the assessee had concealed particulars of income and also furnished inaccurate particulars of income, and levied penalty of Rs.30,00,000/- under Section 271(1)(c) of the Act against the minimum penalty leviable of Rs.29,38,397/-. Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income-tax (Appeals). The C.I.T.(A) held that the Assessing Officer was not able to prove that the claim of the assessee for deduction under Sections 80HHC and 80I of the Act was not bona fide and hence allowed the appeal and deleted the penalty. Aggrieved, the Revenue filed an appeal to the Income-tax Appellate Tribunal ("Tribunal" in short). The Tribunal dismissed the Revenue's appeal and confirmed the order of the C.I.T.(A). Hence the present tax case by the Revenue.

3. Learned Standing Counsel appearing for the Revenue submitted that the assessee had furnished inaccurate particulars of income and it had lead to undue claim of

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deduction under Sections 80HHC and 80I of the Act. It is also submitted that the assessee-company had received a total interest income of Rs.1,20,56,800/-. Further it is contended that the assessee had not returned the entire interest income and also claimed wrongly the deductions under Sections 80HHC and 80I of the Act. It is also further submitted that the assessee had wrongly categorised the interest income under the head "business" for the purpose of claiming deduction under Sections 80HHC and 80I of the Act and the assessee ought to have shown the interest income under "income from other sources". Hence, the levy of penalty by the Assessing Officer is justified and is in confirmity with law.

4. Heard the counsel. The authorities have given a concurrent finding that there was no concealment of particulars of income or furnishing inaccurate particulars of income, by the assessee. The C.I.T.(A), in its order, held as follows:-

> "6. I have carefully considered the argument put forward by the Assessing Officer in his penalty order and the submissions made by the appellant. I find that the appellant company in its Fifth Annual Report for FY 1994-95 has mentioned in Schedule 'O' (nor forming part of accounts) as under:
> "During the year the Company has earned interest from public issue amounting to Rs.120,56,799.96 out of which an amount of Rs.59,89,546.46 has been taken as income which is an extraordinary item.
> In Schedule 'L' (other income) the appellant company has shown an amount of Rs.59,89,546.46 as interest on application money.""
> ".... The Assessing Officer has not brought on record any fact leading to conclusion that this information was received by him from a source other than that furnished by the appellant company itself. In these circumstances it cannot be said that the appellant had concealed its income.
> 8. Similarly the claim for deduction u/s.80HHC and sec.80I cannot be equated with furnishing of inaccurate particulars of its income by the appellant Company. In fact the appellant Company has relied on the judgment of Bombay High Court in CIT vs Nagour Engineering Co. Ltd. (245 ITR 806) wherein it has been held that the bank interests are eligible for deduction u/s.804. It has also placed reliance on the case of CIT vs Punit Chemicals Ltd. (245 ITR 550 (Bom) and Pondicherry Distilleries Ltd Vs ITO (8 ITD 39)(Mad) where the similar principles were applied to the facts of these cases. The fact that the appellant Company was not allowed deduction u/s.80HHC

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and 80I does not ipso facto lead to a conclusion that the appellant had furnished inaccurate particulars of its income or it had concealed its income.

9. In CIT vs Devi Deyal Aluminium Industries P. Ltd (171 ITR 683) the Allahabad High Court has held as under:

> 'Rejection of the explanation does not render it false so as to attract sec.271(1)(c). The assessee failed to substantiate melting loss or wastage but so long as the claim was bonafide, it could not be held to be false'.

10. In the present case also the Assessing Officer has not been able to prove that the claim of the appellant Company for deduction u/s.80HHC & 80I was not bonafide. In view of these facts and above referred decisions, I hold that the facts and circumstances of the present case do not justify application of provisions of sec.271(1)(c). Accordingly the penalty of Rs.30,00,000/- imposed by the Assessing Officer is hereby deleted. The appellant succeeds on this ground."

The order of C.I.T.(A) was confirmed by the Tribunal and it was found by the Tribunal that when disallowances are made on the basis of different interpretations, it cannot be said that particulars of income have been concealed. In this case, the assessee had adopted a particular view on the basis of certain case law or some bona fide relief and a mere rejection of the claim of the assessee by relying on different interpretations does not amount to concealment of the particulars of income or furnishing inaccurate particulars of income, by the assessee. In the case of Dilip N.Shroff Vs. Joint Commissioner of Income-tax and Another, [2007] 291 ITR 519 (SC), the Supreme Court considered the scope of levying of penalty under Section 271(1)(c) of the Act and held as follows:-

> "The legal history of section 271(1)(c) of the Act traced from the 1922 Act prima facie shows that the *Explanations* were applicable to both the parts. However, each case must be considered on its own facts. The role of the *Explanation* having regard to the principle of statutory interpretation must be borne in mind before interpreting the aforementioned provisions. Clause (c) of sub-section (1) of section 271 categorically states that the penalty would be leviable if the assessee conceals the particulars of his income or furnishes inaccurate particulars

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thereof. By reason of such concealment or furnishing of inaccurate particulars alone, the assessee does not ipso facto become liable for penalty. Imposition of penalty is not automatic. Levy of penalty is not only discretionary in nature but such discretion is required to be exercised on the part of the Assessing Officer keeping the relevant factors in mind. Some of those factors apart from being inherent in the nature of penalty proceedings as has been noticed in some of the decisions of this court, inheres on the face of the statutory provisions. Penalty proceedings are not to be initiated, as has been noticed by the Wanchoo Committee, only to harass the assessee. The approach of the Assessing Officer in this behalf must be fair and objective."

"....The term "inaccurate particulars" is not defined. Furnishing of an assessment of value of the property may not by itself be furnishing of inaccurate particulars. Even if the *Explanations* are taken recourse to, a finding has to be arrived at having regard to clause (A) of *Explanation 1* that the Assessing Officer is required to arrive at a finding that the explanation offered by an assessee, in the event he offers one, was false. He must be found to have failed to prove that such explanation is not only not bona fide but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation being not bona fide, it should have been found as of fact that he has not disclosed all the facts which was material to the computation of his income."

"...."Concealment of income" and "furnishing of inaccurate particulars" are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of *suppressio veri* or *suggestio falsi*. Although it may not be very accurate or

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apt but suppressio veri would amount to concealment, suggestio falsi would amount to furnishing of inaccurate particulars."

In the present case, the Tribunal followed the above principles and held that it is not a fit case for levying penalty. The concurrent findings given by both the authorities below are based on valid materials and evidence. In the case of Commissioner of Income-tax Vs. P.Mohanakala, [2007] 291 ITR 278 (SC), the Supreme Court held that whenever there is a concurrent finding by the authorities below, no interference should be called for by the High Court. Under these circumstances, we do not find any error or legal infirmity in the order of the Tribunal so as to warrant interference. Hence, no substantial question of law arises for consideration of this Court and accordingly the tax case is dismissed. No costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, Bench "A",
   Chennai.

2. The Secretary,
   Central Board of Direct Taxes,
   New Delhi.

3. The Commissioner of Income-tax (Appeals) III,
   Chennai-34.

4. The Deputy Commissioner of Income-tax,
   Company Circle I(3),
   Chennai-34.

+1cc to M/s.Pushya Sitaraman,Advocate Sr 36064

NSM (CO)
km/9.7.

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